

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

**JAMIE ARNOLD and CLINTON  
FEGER Individually and on behalf of all  
others similarly situated,**

Plaintiffs,

VS.

**DIRECTV, INC. d/b/a DIRECTV  
HOME SERVICES and DTV HOME  
SERVICES II, LLC,**

Defendants.

Case No. 4:10-CV-00352-AGF

## **DEFENDANTS' MOTION TO DISMISS**

COME NOW Defendants, DIRECTV, Inc. and DTV Home Services II, LLC, and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, move to dismiss Plaintiffs' First Amended Complaint for failure to state a claim and for lack of supplemental jurisdiction over the state law class allegations. Defendants are filing simultaneously herewith a memorandum in support of the instant Motion, explaining that Plaintiffs' Fair Labor Standards Act and Missouri Minimum Wage Law claims must be dismissed because they have failed to set forth facts supporting their individual claims or their class and collective action claims. Plaintiffs' collective action allegations should also be dismissed for the independent reason that Plaintiffs are seeking to assert claims on behalf of a collective of technicians, many of whom were not directly employed by Defendants, and Plaintiffs have not named the direct employers of these technicians as Defendants. Further, there are already numerous collective and class actions involving these technicians pending across the country. Plaintiffs' MMWL class allegations

should be dismissed for the independent reasons that: (1) MMWL claims cannot be pursued through a Rule 23 class action and (2) Rule 23 opt-out class actions and Section 216(b) opt-in collective actions are inherently incompatible. Therefore, this Court should decline to exercise supplemental jurisdiction over the claims of individuals who do not affirmatively join this lawsuit. For the foregoing reasons, Defendants respectfully request that this Court dismiss Plaintiffs' First Amended Complaint and grant such further relief as this Court deems proper and just.

Respectfully submitted,

/s/ Patricia J. Martin

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Counsel for Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 21st day of May, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following: Bradford B. Lear and Todd C. Wertz, Lear Wertz LLP, 2003 West Broadway, Columbia, Missouri 65203, and George A. Hanson, Stueve Siegel Hanson LLP, 460 Nichols Road, Suite 200, Kansas City, MO 64112, Attorneys for Plaintiff.

/s/ Patricia J. Martin